FEDERAL RESERVE BANK OF NEW YORK

[Circular No. **10358**
July 17, 1990]

BANK HOLDING COMPANIES

— Proposed Amendment to Regulation Y Reducing Filing Requirements

— Conditions for Underwriting and Dealing in Securities by Section 20 Subsidiaries

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Comments Invited by August 8

To All State Member Banks and Bank Holding Companies
in the Second Federal Reserve District, and Others Concerned:

The Board of Governors of the Federal Reserve System has issued the following statements:

Filing Requirements

The Federal Reserve Board has requested public comment on a proposed amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) to reduce the filing requirements under the Change in Bank Control Act.

Comment is requested by August 8, 1990.

The proposed amendment would remove the current regulatory requirement that a person that has already received regulatory clearance to acquire 10 percent or more of the shares of a state member bank or bank holding company must file additional notices under the Change in Bank Control Act for subsequent acquisitions resulting in ownership of between 10 and 25 percent of the shares of the bank or bank holding company.

Conditions for Securities Underwriting and Dealing

The Federal Reserve Board has requested public comment on a proposal to modify several conditions in its Orders authorizing limited underwriting and dealing in securities by bank holding company subsidiaries.

Comment should be submitted to the Board by August 8, 1990.

Specifically, the Board is requesting comments on the conditions prohibiting interlocking officers, directors, and employees between a securities underwriting subsidiary and any affiliated depository institution, and cross-marketing activities by a depository institution on behalf of an affiliated securities underwriting subsidiary.

The Board is also requesting comment on whether an exception to the prohibition on the purchase and sale of assets between a securities company and its affiliated depository institutions, allowing the purchase and sale of U.S. Treasury securities, should be expanded to allow for the purchase and sale of U.S. Government agency securities.

Enclosed are the texts of the Board's notices on these matters, as submitted for publication in the *Federal Register.* Comments thereon should be submitted by August 8, and may be sent to the Board, as set forth in the notices, or to our Domestic Banking Applications Division.

E. GERALD CORRIGAN,
President.

FEDERAL RESERVE SYSTEM
12 CFR Part 225

[Regulation Y; Docket No. R-0700.]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System is proposing to amend the portion of Regulation Y, 12 CFR Part 225, implementing the Change in Bank Control Act (the "CIBC Act") to remove the current regulatory requirement that a person that has already received regulatory clearance to acquire 10 percent or more of the shares of a state member bank or bank holding company must file additional notices under the CIBC Act for subsequent acquisitions resulting in ownership of between 10 and 25 percent of the shares of the bank or bank holding company.

DATE: Comments must be received by August 8, 1990.

ADDRESS: All comments, which should refer to Docket No. R-0700, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th & Constitution Avenue, N.W., Washington, D.C., between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Assistant General Counsel (202/452-3583), Mark J. Tenhundfeld, Attorney

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(202/452-3612), or Elizabeth Thede, Attorney, Legal Division (202/452-3274); Sidney M. Sussan, Assistant Director (202/452-2638), or Beverly L. Evans, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452-2573). For the hearing impaired only, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: Under the CIBC Act, 12 U.S.C. § 1817(j), persons acting either individually or in concert to acquire control of any insured state member bank or bank holding company must provide the Board with 60 days prior written notice describing the proposed acquisition. The transaction may proceed at the end of the 60-day period unless the Board disapproves the transaction or extends the notice period. Alternatively, an acquisition may proceed prior to the expiration of the 60-day review period if the Board issues a written statement of its intent not to disapprove the transaction.

Regulation Y identifies certain transactions that are presumed to constitute the acquisition of control. In particular, section 225.41(b)(2) of Regulation Y establishes a regulatory presumption requiring the filing of a notice of change in bank control if, after an acquisition, any person or group of persons acting in concert will control 10 percent or more of a class of voting securities of a bank or bank holding company and if either: (i) the institution has registered securities under

section 12 of the Securities Exchange Act of 1934 (5 U.S.C. § 781), or (ii) no other person will own a greater percentage of that class of voting securities immediately after the transaction. 12 CFR § 225.41(b)(2). Under this regulation, a person must make additional CIBC Act filings for each acquisition of additional shares of the bank or bank holding company until the person acquires in excess of 25 percent of the shares of the bank or bank holding company. A shareholder who continuously controls 25 percent or more of a class of voting securities and who has received regulatory approval for that acquisition is generally not required to file further notices under the CIBC Act to acquire additional shares of that class of voting shares. 12 CFR § 225.42(a).

Many of the notices currently filed with the Board under the CIBC Act involve situations where a shareholder who has already been subject to the regulatory review process under the CIBC Act seeks to acquire a small number of additional shares with a minimal expenditure of funds. In other instances, a controlling shareholder may be required by the Board's current regulations to file a notice in connection with a redemption by a bank or bank holding company of shares of another shareholder, even though the percentage ownership of the controlling shareholder increases only minimally and the controlling shareholder expends no funds and acquires no additional shares. In the Board's experience, the requirement for additional filings

by a person that has already been subject to regulatory review and seeks to control less than 25 percent of the shares of the bank or bank holding company imposes significant burdens on the acquiring person without identifying significant financial, managerial, competitive, or other problems.

The proposed amendment would allow a person that has received Board clearance under the CIBC Act to acquire 10 percent or more of a class of voting securities of a state member bank or bank holding company to make additional acquisitions of voting securities of that same institution without filing further notices under the CIBC Act unless the acquisitions would cause the person's ownership interest to exceed 25 percent of the class of voting securities. Should the financial and managerial resources or other circumstances indicate that monitoring of additional acquisitions in a specific case is appropriate, the Board and Reserve Banks would retain the authority to notify a bank, bank holding company, or acquiring shareholder prior to an acquisition that a notice under the CIBC Act would be required.

The Board believes that the proposed amendment to Regulation Y would significantly reduce the regulatory burden under the CIBC Act without impairing the Board's ability to properly evaluate acquisitions under the statutory factors set forth under the CIBC Act. The Board seeks public comment regarding whether this proposal is appropriate in light of the Board's responsibilities under the CIBC Act.

REGULATORY FLEXIBILITY ACT ANALYSIS. This proposal to amend the Board's Regulation Y will decrease the burden on small companies by narrowing the circumstances under which shareholders of small banks and bank holding companies must file notices under the CIBC Act. No additional regulatory burden would be placed on such companies. Moreover, the proposal would not impose any additional regulatory burden on banks or bank holding companies of any size that are targets of a proposed change in control. Thus, the proposal is not expected to have any adverse economic impact on small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. § 601 et seq.).

PAPERWORK REDUCTION ACT ANALYSIS. This proposed regulation reduces the number of instances in which notices must be filed with the Federal Reserve System under the CIBC Act. Accordingly, the regulation will lessen the paperwork burden for individuals, small businesses, and other "persons," as defined in the Paperwork Reduction Act (44 U.S.C. § 3501 et seq.).

List of Subjects in 12 CFR Part 225:

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set out in this notice, and pursuant to the Board's authority under section 13 of the Change in Bank

Control Act (12 U.S.C. § 1817(j)(13)), the Board proposes to amend 12 CFR Part 225 as follows:

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

2. In § 225.42, the heading to paragraph (a) is revised, paragraph (a) is redesignated as paragraph (a)(1), and new paragraph (a)(2) is added to read as follows:

§ 225.42 Transactions not requiring prior notice.

* * * * *

(a)(1) Increase of previously authorized acquisitions above 25 percent. * * *

(2) Increase of previously authorized acquisitions between 10 percent and 25 percent.

The acquisition of additional shares of a class of voting securities of a state member bank or bank holding company by any person (or persons acting in concert) who has lawfully acquired and maintained control of 10 percent or more of that class of voting securities after filing the notice required under section 225.41(b)(2) of this subpart if the aggregate amount of voting securities held is less than 25 percent of any class of voting securities of the institution.

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Board of Governors of the Federal Reserve System, July 2, 1990.

(signed) William W. Wiles

William W. Wiles
Secretary of the Board

FEDERAL RESERVE SYSTEM

[Docket No. R-0701]

Review of Restrictions on
Director and Employee Interlocks, Cross-Marketing Activities
and the Purchase and Sale of U.S. Government Agency Securities,
Contained in the Board's Section 20 Securities Orders

The Board is providing an opportunity for public comment in connection with its review of certain of the conditions established in its decisions permitting nonbank subsidiaries of bank holding companies (so-called "section 20 subsidiaries") to underwrite and deal in securities to a limited extent. The conditions that the Board has under review are: the prohibition on director, officer and employee interlocks between a section 20 subsidiary and its affiliated banks and thrifts; the restriction on a bank or thrift acting as agent for, or engaging in marketing activities on behalf of, an affiliated section 20 subsidiary; and the prohibition on the purchase and sale of U.S. Government agency securities, which is part of the broader prohibition on the purchase and sale of financial assets, between a section 20 subsidiary and its affiliated bank or thrift.

In its section 20 Orders, the Board established a series of operating limitations in order to minimize the potential for securities underwriting and dealing risk being passed to the federally insured affiliates, and thus to the federal safety net, as well as to prevent conflicts of interest, unfair competition and other adverse effects. See, e.g.,

Citicorp, J.P. Morgan & Co. Incorporated, and Bankers Trust New York Corporation, 73 Federal Reserve Bulletin 473, 492 (1987);

and J.P. Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, and Security Pacific Corporation, 75 Federal Reserve Bulletin 192, 202-03 (1989). In adopting these restrictions, the Board stated that it would, based on experience, review the continued appropriateness of particular limitations.

Earlier this year, in its consideration of applications by three foreign banking organizations to establish section 20 subsidiaries, the Board stated that it would consider modifying the restrictions on director, officer and employee interlocks and on cross-marketing activities, where such modifications would be consistent with the purposes of the prudential framework established for securities activities conducted by bank holding companies. Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC and Barclays Bank PLC, 76 Federal Reserve Bulletin 158, 165-66 (1990). The Board noted that various proposals considered by the Congress to amend the Glass-Steagall Act would not have required a complete prohibition on interlocks between a securities underwriting subsidiary and an insured bank, and would have authorized the Board to permit officer or director interlocks, taking into consideration the size of the organizations, safety and soundness considerations, and other appropriate factors, including unfair competition in securities

activities. Also, the proposed legislation did not restrict cross-marketing activities by a bank or thrift on behalf of its affiliated section 20 subsidiary.

One of the principal purposes of the section 20 Order restrictions is to ensure that the securities activities are conducted in a corporation over which the affiliated banks have no ownership, financial or managerial control. In this regard, the Board is considering in its review of the interlock prohibitions possible alternative restrictions that would maintain the intended separation while allowing the affiliates to take advantage of existing managerial expertise and operational efficiencies. These modifications could include allowing director interlocks between the section 20 subsidiary and its bank and thrift affiliates so long as a majority of the board of directors of the securities underwriting company would not be composed of directors of the affiliated depository institutions. The current restrictions already allow interlocks between the boards of a bank holding company and its section 20 subsidiary.

With respect to officer and employee interlocks, the Board is requesting comment on whether the complete prohibition could be replaced with a general statement requiring that the section 20 subsidiary not be managed or controlled by its affiliated banks or thrifts and that there not be a substantial identity of personnel between the entities. In this regard, the Board is also seeking comment on whether certain specific interlocks should be prohibited (e.g., whether an officer or

director of a bank or thrift should not be permitted to serve as chief executive officer or chief financial officer of an affiliated securities underwriting company). If these interlock provisions are modified, an officer of a bank or thrift also serving as an officer of a section 20 subsidiary would have to take care to ensure that there is no confusion regarding which entity the officer represents in a particular transaction, especially when dealing with customers of the bank or thrift.

The Board's section 20 Orders also prohibit a bank or thrift affiliate of a section 20 company from acting as agent for, or engaging in marketing activities on behalf of, the section 20 company. Like the interlock prohibitions, the principal purpose of the cross-marketing prohibitions is to ensure that the securities activities are insulated in operation from the affiliated insured depository institutions.

The Board did not intend to place a complete bar on marketing activities by an insured bank on behalf of its affiliated section 20 company. The current restriction, for instance, allows a bank to inform its customers of the available services of the underwriting subsidiary, and, at the specific request of a customer, to provide information about securities being underwritten by the section 20 affiliate. As noted, the Congressional Glass-Steagall repeal legislation passed by the Senate and by the House Banking Committee did not prohibit cross-marketing activities. That legislation would have required certain disclosures regarding the uninsured status of securities

affiliates and would have prohibited banks from expressing an opinion about securities offered by affiliates without disclosing the affiliate's role and interest with respect to the securities.

The Board is requesting comment on modifying the current cross-marketing restrictions by placing substantial reliance upon the current section 20 Order disclosure requirements, coupled with the provisions in sections 16 and 21 of the Glass-Steagall Act prohibiting a bank from engaging directly in underwriting and dealing in securities. The Board is particularly interested in receiving comments on those aspects of such marketing activities that should be limited in order to avoid potential conflicts of interest.

The Board is also considering amending the restriction in the Board's section 20 Orders regarding a bank or thrift's purchase of financial assets from, or sale of such assets to, its affiliated securities underwriting company. The conditions in those Orders currently prohibit such transactions except in the case of U.S. Treasury securities, or direct obligations of the Canadian federal government, that are not subject to repurchase or reverse repurchase agreements between the underwriting subsidiary and its bank or thrift affiliates. See, J.P. Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, and Security Pacific Corporation, 75 Federal Reserve Bulletin 192, 216 (1989); and Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC

and Barclays Bank PLC, 76 Federal Reserve Bulletin 158, 172 (1990).

The Board permitted the purchase and sale of U.S. Treasury securities, as an exemption to the prohibition on the purchase and sale of financial assets between a section 20 company and its bank or thrift affiliate, because of the breadth and liquidity of the market for such instruments. The Board is seeking comment on extending this exemption to those U.S. Government agency securities, and those U.S. Government-sponsored agency securities, for which there is a market with a breadth and liquidity comparable to that for U.S. Treasuries. Accordingly, in requesting comment on whether the exemption for U.S. Treasury securities should be expanded by allowing the purchase and sale of U.S. agency securities between a bank or thrift and its affiliated securities underwriting company, the Board is seeking specific comment on the criteria that should be used in making the determination to exempt such securities from the restriction on the purchase and sale of assets. Commenters are also asked to address whether the exemption should apply to the securities of all U.S. Government and U.S. Government-sponsored agencies, and to all issues of such securities, regardless of the size of the issue.

Any comments regarding these matters should refer to Docket No. R-0701 and be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal

Reserve System, Washington, D.C. 20551, not later than August 8, 1990.

Board of Governors of the Federal Reserve System, July 2, 1990.

(signed) Jennifer J. Johnson

Jennifer J. Johnson
Associate Secretary of the Board

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PENDING PROPOSALS

To the Addressee:

Over the past few weeks, the Board of Governors of the Federal Reserve System has invited public comment on several proposed regulatory changes. For your convenience, listed below are those that remain outstanding:

Topic	Circular No.	Deadline
Tie-in prohibitions under Regulation Y	10357	July 30
Penalty on Fedwire overdrafts by bankers' banks and Edge corporations	10353	July 31
Funds transfers under Article 4A of the UCC	10350	August 6
Filing requirements under Regulation Y	10358 (enclosed)	August 8
Securities underwriting and dealing by bank holding company subsidiaries	10358 (enclosed)	August 8
Investment advisory services of bank holding companies	10357	August 9
Dividend payments under Regulation H	10354	August 13

Circulars Division
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